

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

KENNETH MYNATT,)
)
Plaintiff,)
v.) No. 1:06-0049
) JUDGE ECHOLS
TENNESSEE DEPARTMENT OF)
CORRECTION, et al.,)
)
Defendants.)

ORDER

Pending before the Court are Defendants' Motion to Dismiss (Docket Entry No. 26), to which Plaintiff Kenneth Mynatt filed a response (Docket Entry No. 30), and the Report and Recommendation ("R&R") entered by the United States Magistrate Judge on June 18, 2007 (Docket Entry No. 32), to which Defendants filed Objections to the Magistrate Judge's Report and Recommendation (Docket Entry No. 34).¹

This prisoner civil rights action is brought under 42 U.S.C. § 1983 against the Tennessee Department of Correction, the West Tennessee State Penitentiary, and the Turney Center Industrial Prison and Farm Internal Affairs Office as well as against several individuals employed by these agencies. The lawsuit concerns a

¹The Clerk sent a copy of the R&R to the Plaintiff at his last-known address by certified mail, but the mail was returned to the Court marked "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD." (Docket Entry No. 33.) Plaintiff has not filed any objections.

beating Plaintiff allegedly suffered at the hands of prison gang members after Plaintiff requested placement in protective custody.

The Magistrate Judge recommends dismissal of the Tennessee Department of Correction, the West Tennessee State Penitentiary, and the Turney Center Industrial Prison and Farm Internal Affairs Office on Eleventh Amendment immunity grounds. The Magistrate Judge also recommends dismissal of Nicky Jordan from the suit because Plaintiff did not name Jordan as a defendant and Plaintiff did not serve Jordan with process.² The Magistrate Judge also recommends denying Defendants' motion to dismiss for failure to exhaust administrative remedies, in light of Jones v. Bock, – U.S. –, 127 S.Ct. 910 (2007).

When a party makes timely objections to a Report and Recommendation, the Court "shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire." L.R.M.P. 9(b)(3).

²On his own accord, Jordan *pro se* made an appearance and requested additional time to respond to Plaintiff's complaint, and the Magistrate Judge granted the motion in error. (Docket Entry Nos. 24 & 25.)

The only objection Defendants make is to a portion of the factual recitation in the R&R. Defendants assert that, as Plaintiff pled in his Complaint, the events giving rise to this suit occurred at the Turney Center Industrial Prison Farm or the West Tennessee State Penitentiary, but not at the Northeast Correctional Complex, as stated by the Magistrate Judge. Having conducted a *de novo* review of the record, the Court sustains Defendant's objection. In all other respects, however, the R&R accurately states the facts and applies the law. Accordingly,

(1) Defendants' Objections to the Magistrate Judge's Report and Recommendation (Docket Entry No. 34) are hereby SUSTAINED.

(2) The R&R (Docket Entry No. 32) is hereby ACCEPTED IN PART and REJECTED IN PART. The Court REJECTS that portion of the R&R which reports that the events giving rise to this lawsuit occurred at the Northeast Correctional Complex. In all other respects, the R&R is ACCEPTED.

(3) Defendants' Motion to Dismiss (Docket Entry No. 26) is hereby GRANTED IN PART and DENIED IN PART. The Motion is GRANTED in that the Tennessee Department of Correction, the West Tennessee State Penitentiary, the Turney Center Industrial Prison and Farm Internal Affairs Office, and Nicky Jordan are dismissed from the lawsuit. The Motion is DENIED in all other respects.

(4) Named Defendants the Tennessee Department of Correction, the West Tennessee State Penitentiary, and the Turney Center

Industrial Prison and Farm Internal Affairs Office are hereby DISMISSED WITH PREJUDICE on Eleventh Amendment immunity grounds.

(5) Nicky Jordan, who was not named as a Defendant and who was not served with process, is hereby DISMISSED WITHOUT PREJUDICE.

(6) Plaintiff Kenneth Mynatt is hereby DIRECTED to keep the Court informed of his current address. Failure to keep the Court informed of address changes or failure to prosecute the case may result in dismissal of the case with prejudice.

(7) The Clerk is hereby DIRECTED to send a copy of this Order by certified mail and regular mail to Plaintiff at his last-known address of record.

(8) This case is hereby returned to the Magistrate Judge under the original order of reference (Docket Entry No. 7) and to schedule a trial to commence no later than June 30, 2008. The Magistrate Judge is directed to coordinate the setting of a trial date with Judge Echols' Courtroom Deputy. The Magistrate Judge is to monitor and manage the case to ensure it is ready for trial on the date scheduled.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", is written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE